



MIKE CHABRIES  
*Executive Director*  
Utah Department of Corrections

MICHAEL O. LEAVITT  
*Governor*

GAE LYN DELAND  
*Director*  
Information Technology

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## MEMORANDUM OF AGREEMENT TO LICENSE O-TRACK SOFTWARE

WHEREAS, the State of Montana Department of Corrections is in need of an offender management system to manage its offender population and wishes to acquire and use O-TRACK, and

WHEREAS, the State of Utah Department of Corrections developed O-TRACK and desires to share O-TRACK with other states to assist in the Homeland Security effort, and

WHEREAS, the State of Utah Department of Corrections would like to license O-TRACK at no charge to other states to promote and require the sharing of criminal data with Utah and other consortium states, and

WHEREAS, the sharing of the O-TRACK source code with the State of Montana and other states would allow the State of Utah to receive benefits that would substantially exceed its investment, and

WHEREAS, the sharing of the O-TRACK source code with the State of Montana and other states would allow the State of Utah to share costs of future development and maintenance costs, and

WHEREAS, the State of Utah taxpayers contributed \$4,593,881.13 or 35% and the State of Utah has received \$1,450,000 or 11% of the O-TRACK development costs as joint development funding from other states, and

WHEREAS, approximately 15% of the funding or \$2,046,752.72 was derived from numerous NCHIP and Byrne grants which require "that all computer programs (software) produced under this (these) grants will be made available to the BJA and/or BJS for transfer to authorized users in the criminal justice community without cost other than that directly associated with the transfer," and

WHEREAS, the value of O-TRACK was increased approximately \$5,216,002.50 or 39% by other states in the consortium, and

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Montana

Department of Corrections \* Bureau of Information Technology

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WHEREAS, the other states used both federal and state funding sources for this "increased value" with the understanding that Utah and any states desiring to participate in the consortium would receive the benefit of this increased value.

NOW, THEREFORE, the Utah Department of Corrections and the Montana Department of Corrections agree as follows:

1. This memorandum provides the terms by which the Utah Department Of Corrections will license software known as O-TRACK to the Montana Department of Corrections. This memorandum also governs Montana Department of Corrections' right to use the software and sets forth the terms under which Utah Department of Corrections may provide future assistance to Montana Department of Corrections with respect to the software.
2. The software subject to this agreement is the offender management system, O-TRACK. The Utah Department of Corrections will provide the Montana Department of Corrections with the source software code and source framework code required to operate the O-TRACK system. The Montana Department of Corrections is responsible for acquiring at its own expense any commercial computer software upon which O-TRACK may be dependent.
3. The Montana Department of Corrections agrees to promptly reimburse the Utah Department of Corrections for any costs associated with licensing O-TRACK to the Montana Department of Corrections including but not limited to onsite travel to demonstrate the O-TRACK system. All such licensing fees and costs not to exceed \$20,000. The costs of developing O-TRACK shall not be recovered from the Montana Department of Corrections.
4. From time to time the Utah Department of Corrections may provide additional assistance with respect to the installation, training or maintenance of O-TRACK at the Montana Department of Corrections' request. However, the Utah Department of Corrections is not required to provide any additional assistance. If the Utah Department of Corrections elects to provide additional assistance, the Montana Department of Corrections shall promptly reimburse the Utah Department of Corrections for all costs reasonably related thereto, including the costs of personnel, travel, and telephone.
5. To the best of its knowledge, the Utah Department of Corrections controls the ownership rights for O-TRACK. The Utah Department of Corrections retains the title and any rights it has to such software, including any copyrights or patent rights. The Montana Department of Corrections agrees that it will make no claim to the title, or interest therein, to O-TRACK or any copies thereof, nor will it make a claim to any proprietary rights related to O-TRACK.
6. In exchange for the Utah Department of Corrections providing O-TRACK at no charge to the Montana Department of Corrections, Montana Department of Corrections agrees to provide any and all enhancements or modifications made by the Montana Department of

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Utah Montana

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Corrections to the Utah Department of Corrections at no charge. The Montana Department of Corrections agrees not to sell, distribute, share or otherwise disclose the O-TRACK system or any part thereof to any person or entity without the Utah Department of Corrections' prior written consent. The Montana Department of Corrections may not export O-TRACK into any country as prohibited by the United States Export Administration Act and the regulations set forth therein.

7. The Montana Department of Corrections agrees to take all reasonable steps to protect O-TRACK from unauthorized use, reproduction, publication, disclosure or distribution; and agrees to treat the O-TRACK system as confidential, and ensure that any employees of the Montana Department of Corrections who have access to the O-TRACK system are advised of its confidential and proprietary nature. Upon receiving knowledge of any unauthorized use or disclosure of O-TRACK, the Montana Department of Corrections shall promptly notify the Utah Department of Corrections, and cooperate with the Utah Department of Corrections in any litigation it brings against third parties to protect its proprietary rights.
8. The Montana Department of Corrections acknowledges that O-TRACK is being licensed in "as is" condition. The Montana Department of Corrections acknowledges that it relies on its own judgment and expertise in selecting, accepting, and using O-TRACK. The Utah Department of Corrections does not warrant O-TRACK's fitness for any particular purpose, nor does the Utah Department of Corrections make any other express or implied warranties, including any warranties of merchantability and non-infringement, with respect to O-TRACK.
9. In no event shall the Utah Department of Corrections be liable to the Montana Department of Corrections for any loss of profits or savings, or for any incidental, indirect, special or consequential damages arising out of the Montana Department of Corrections' use or inability to use this product, even if the Utah Department of Corrections had knowledge or reason to know of the possibility of such damages. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages so the above limitation or exclusion may not apply. It hereby waives any and all claims it may have against the Utah Department of Corrections now or in the future in connection with O-TRACK. The Utah Department of Corrections makes no representation that the use of the software will not infringe any patent, copyright, trademark or other proprietary right of another party.
10. To the extent permitted by federal and state laws, the Montana Department of Corrections hereby agrees to defend, indemnify and hold the Utah Department of Corrections blameless for any loss, claim, damage or liability of any kind of nature, which may arise from the Montana Department of Corrections' acts in relation to the subject matter or terms of this agreement, including the Montana Department of Corrections' use or storage of O-TRACK. The Montana Department of Corrections further agrees to indemnify and hold the Utah Department of Corrections blameless with respect to any claim brought by a third party in relation to the Montana Department of Corrections' use of O-TRACK.
11. This memorandum constitutes the entire agreement of the parties, and supersedes any prior agreement or understanding, whether written or oral, that applies to the subject matter of

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this agreement. No right or license is granted under this agreement, except as specifically set forth in this memorandum. This agreement may not be assigned by the Montana Department of Corrections without prior written consent from the Utah Department of Corrections.

12. The terms of this agreement may be modified only by written addendum signed by both parties.
13. The terms of this agreement shall be governed by the laws of the State of Utah.
14. The Utah Department of Corrections agrees to provide the Montana State Legislative Auditor or their authorized agents access to any records necessary to determine compliance with this agreement. (Mont. Code Ann. § 18-1-118.)
15. The Utah Department of Corrections is notified that pursuant to 2-17-514, MCA, the Montana Department of Administration retains the right to cancel or modify any contract, project or activity that is not in compliance with the Agency's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.

State of Utah, Department of Corrections

By: Mike Chabries, Executive Director  
Utah Department of Corrections



(signature of authorizing party)

Date: 1/22/04

State of Montana, Department of Corrections

By: Bill Slaughter, Director  
Montana Department of Corrections



(signature of authorizing party)

Date: 1/5/04

State of Utah, Office of the CIO

By: Val Oveson, CIO  
State of Utah



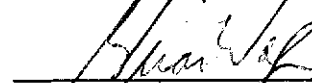
(signature of authorizing party)

Date: 1/30/04

Effective: \_\_\_\_\_

State of Montana, Office of the CIO

By: Brian Wolf, CIO  
Department of Administration



(signature of authorizing party)

Date: 1-19-04